

struction of the Constitution. It is to the plain disadvantage of Indian wards of the National Government and school children of the several States; it threatens many business arrangements that have been made for their benefit.

I dissent.

MR. JUSTICE McREYNOLDS concurs in this opinion.

HELVERING, COMMISSIONER OF INTERNAL
REVENUE, v. MITCHELL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 324. Argued January 14, 1938.—Decided March 7, 1938.

Section 293 (b) of the Revenue Act of 1928, Title I, provides that, if any part of a deficiency is due to fraud with intent to evade tax, 50% of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid. Section 146 (b) of the same Title declares that any person who wilfully attempts in any manner to evade or defeat any tax imposed by the Title, shall, in addition to other penalties provided by law, be guilty of a felony and upon conviction be subject to fine and imprisonment.

Held: That an acquittal of a charge of wilful attempt to evade, under § 146 (b), does not bar assessment and collection of the 50% addition prescribed by § 293 (b). P. 397 *et seq.*

The doctrine of *res judicata* is inapplicable because of the difference in quantum of proof in civil and criminal cases; the acquittal was merely an adjudication that the proof was not sufficient to overcome all reasonable doubt of guilt. P. 397.

The doctrine of double jeopardy is inapplicable because the 50% addition to tax provided by § 293 (b) is not primarily punitive but is a remedial sanction imposed as a safeguard for protection of the revenue and to reimburse the Government for expense and loss resulting from the taxpayer's fraud. As such it may be enforced by a civil procedure to which the accepted rules and

constitutional guaranties governing the trial of criminal prosecutions do not apply. P. 398.

Coffee v. United States, 116 U. S. 436, and *United States v. La Franca*, 282 U. S. 568, distinguished.

89 F. 2d 873, reversed.

CERTIORARI, 302 U. S. 670, to review a judgment reversing in part a decision of the Board of Tax Appeals, 32 B. T. A. 1093, which sustained a deficiency income tax assessment, with a 50% addition for fraud.

Mr. Edward S. Greenbaum, with whom *Solicitor General Reed*, *Assistant Attorney General Morris*, and *Messrs. Sewall Key* and *Lucius A. Buck* were on the brief, for petitioner.

Mr. William Wallace for respondent.

The fifty per centum addition to the tax deficiency is a penalty intended for punishment.

As fraud presupposes a plan conceived before its execution, it must of necessity be wilful. There can be no act of fraudulent evasion under § 293 (b) that would not also be a wilful evasion under § 146 (b). The penalty prescribed by § 293 (b) is imposed only because of acts which, when committed, constitute a crime.

The fact that the words "tax" or "addition to the deficiency" are used to describe the imposition, or that collection is made through the Bureau of Internal Revenue of the Treasury Department, is of no significance if the real purpose of the imposition is to define and suppress a crime. *Child Labor Tax Case*, 259 U. S. 20; *Helwig v. United States*, 188 U. S. 605; *Dorsheimer v. United States*, 7 Wall. 166.

Even though termed a tax, the assessment is under suspicion of not being a true tax, when levied because of illegal acts. *United States v. La Franca*, 282 U. S. 568. If "evidence of a crime is essential to the imposition of

a tax, the courts do not hesitate to pronounce it a penalty, even if it may incidentally bring in revenue." *Regal Drug Corp. v. Wardell*, 260 U. S. 386; *Lipke v. Lederer*, 269 U. S. 557. Nor does the fact that the penalty may be superimposed on what is clearly a tax lessen the penal character of the former. *Helwig v. United States*, *supra*, 614-616; 17 Ops. Atty. Gen. 433; 23 Ops. Atty. Gen. 398.

A review of the decisions of this Court compels us to the conclusion that (1) if a so-called tax is meant primarily to suppress a certain kind of conduct, rather than to supply regular revenue for the support of the Government, or (2) if the addition is greatly out of proportion to the ordinary tax, or (3) if it is levied upon a particular act because of its fraud, then it is regarded as a penalty and punishment rather than a mere tax. Cases *supra*, and *Passavant v. United States*, 148 U. S. 214; *Wright v. Blakeslee*, 101 U. S. 174; *Bartlett v. Kane*, 16 How. 263; *Moore Shipbuilding Co. v. United States*, 50 F. 2d 288. *Tayloe v. Sandford*, 7 Wheat. 13, 17; and *Stearns v. United States*, 22 Fed. Cas. 1188, 1192, distinguished.

All of the cases above cited which held the addition to be a penalty or punishment were civil in their nature. In all of them the rules of evidence and of procedure applicable to civil actions were applied, except that the defendant could not be compelled to bear witness against himself. *Lees v. United States*, 150 U. S. 476, 480; *Boyd v. United States*, 116 U. S. 616. This application of rules of civil procedure included admissibility of evidence, *United States v. Zucker*, 161 U. S. 475, also quantum of proof, *United States v. Regan*, 232 U. S. 37, and direction of verdicts, *Hepner v. United States*, 213 U. S. 103. The penalties were either assessed by administrative officials or sued for in a civil action.

Despite the fact that the statutory provisions so enforced were civil in their nature, or at most *quasi criminal*—this term was applied to them in *Boyd v. United States*, *supra*, (p. 634)—they were uniformly held to be penalties, *i. e.*, punishment for wrongful conduct. In none of the cases did the fact of adherence to the civil forms of action militate against a determination that the imposition was penal in character. *Oceanic Navigation Co. v. Stranahan*, 214 U. S. 320, distinguished.

Neither the method of collection nor the taxpayer's inability to invoke the aid of equity to enjoin collection are determinative of the punitive character of such additions. *Helwig v. United States*, *supra*; *United States v. Chouteau*, 102 U. S. 603, 611; *Dorsheimer v. United States*, *supra*.

In *Stockwell v. United States*, 13 Wall. 531, no question of double jeopardy was presented nor did the Court by using the word "compensatory" mean to detract from the essentially punitive character of the penalty.

The constitutional provisions against double jeopardy bar any present imposition of the fifty per centum addition to the tax. *Boyd v. United States*, 116 U. S. 616; *Murphy v. United States*, 272 U. S. 630; *United States v. Warner Brothers Pictures, Inc.*, 13 F. Supp. 614; *United States v. Donaldson-Shultz Co.*, 148 Fed. 581; *United States v. Chouteau*, 102 U. S. 603; *Coffey v. United States*, 116 U. S. 436; *Various Items v. United States*, 282 U. S. 577; *United States v. Glidden Co.*, 78 F. 2d 639; 296 U. S. 652.

All the facts and intents requisite to the imposition of the 50% addition to the deficiency were put in issue and determined against the Government in the criminal trial, and the judgment of acquittal bars petitioner from obtaining a second judgment based upon the same facts and intents.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Revenue Act of 1928, c. 852, § 293, 45 Stat. 791, provides, in dealing with assessment of deficiencies in income tax returns:

“(b) *Fraud*.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid. . . .”

The question for decision is whether assessment of the addition is barred by the acquittal of the defendant on an indictment under § 146 (b) of the same Act for a wilfull attempt to evade and defeat the tax.

The Commissioner of Internal Revenue found that Charles E. Mitchell of New York had, in his income tax return for the year 1929, fraudulently deducted from admitted gross income an alleged loss of \$2,872,305.50 from a purported sale of 18,300 shares of National City Bank stock to his wife; that he had fraudulently failed to return the sum of \$666,666.67 received by him as a distribution from the management fund of the National City Company, of which he was chairman; and that these fraudulent acts were done with intent to evade the tax. On December 8, 1933, the Commissioner notified Mitchell that there was a deficiency in his tax return of \$728,709.84 and, on account of the fraud, a 50 per cent. addition thereto in the sum of \$364,354.92.

Mitchell appealed to the Board of Tax Appeals, which sustained the Commissioner's determination. 32 B. T. A. 1093. Upon a petition for review, the Circuit Court of Appeals concluded that there was ample evidence to support the Board's findings that Mitchell had fraudulently made deduction of the loss and that he had fraudulently failed to return the amount received from the management fund; and that, despite the facts hereafter stated,

the Board was free to find the facts according to the evidence. It accordingly affirmed the assessment of the deficiency of \$728,709.84. But it reversed the Board's approval of the additional assessment of \$364,354.92, because of the following facts:

Before the deficiency assessment was made Mitchell had been indicted in the federal court for southern New York under § 146 (b) of the Revenue Act of 1928, which provides:

"Any person . . . who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than 5 years, or both, together with the costs of prosecution."

The first count charged that Mitchell "unlawfully, wilfully, knowingly, feloniously, and fraudulently did attempt to defeat and evade an income tax of, to wit, \$728,709.84, upon his net income for 1929." He was tried on the indictment and acquitted on all the counts. The item of \$728,709.84 set out in the first count is the same item as that involved in the deficiency assessed; and both arose from the same transactions of Mitchell. But the addition of \$364,354.92 by reason of fraud was not involved in the indictment.

The Circuit Court of Appeals held that the prior judgment of acquittal was not a bar under the doctrine of *res judicata*; and hence it affirmed the assessment of the \$728,709.84. But it held that our decisions in *Coffey v. United States*, 116 U. S. 436, and *United States v. La Franca*, 282 U. S. 568, required it "to treat the imposition of the penalty of 50 per cent. as barred by the prior acquittal of Mitchell in the criminal action." 89 F. (2d) 873. Mitchell's petition for certiorari to review so much of the judgment as upheld the assessment of the de-

ficiency of \$728,709.84 was denied. 302 U. S. 723. The Commissioner's petition to review so much of the judgment as denied the 50 per centum in addition was granted, because of the importance in the administration of the revenue laws of the questions presented and alleged conflict in decisions. 302 U. S. 670.

First. Mitchell contends that the claim for the 50 per cent. is barred by the doctrine of *res judicata*. He asserts that all the facts and intents requisite to the imposition of the 50 per centum addition to the deficiency were put in issue and determined against the Government in the criminal trial, and that hence, under the doctrine of *res judicata* the judgment of acquittal bars it from obtaining a second judgment based upon the same facts and intents. Since this proceeding to determine whether the amount claimed is payable as a tax is a proceeding different in its nature from the indictment for the crime of wilfully attempting to evade the tax, the contention that the doctrine of estoppel by judgment applies rests wholly on the assertion that the issues here presented were litigated and determined in the criminal proceeding. Compare *Tait v. Western Maryland Ry. Co.*, 289 U. S. 620, 623. But this is not true.

The difference in degree of the burden of proof in criminal and civil cases precludes application of the doctrine of *res judicata*. The acquittal was "merely . . . an adjudication that the proof was not sufficient to overcome all reasonable doubt of the guilt of the accused." *Lewis v. Frick*, 233 U. S. 291, 302. It did not determine that Mitchell had not wilfully attempted to evade the tax. That acquittal on a criminal charge is not a bar to a civil action by the Government, remedial in its nature, arising out of the same facts on which the criminal proceeding was based has long been settled. *Stone v. United States*, 167 U. S. 178, 188; *Murphy v. United States*, 272 U. S. 630, 631, 632. Compare *Chantangco v. Abaroa*, 218 U. S.

476, 481, 482.¹ Where the objective of the subsequent action likewise is punishment, the acquittal is a bar, because to entertain the second proceeding for punishment would subject the defendant to double jeopardy; and double jeopardy is precluded by the Fifth Amendment whether the verdict was an acquittal or a conviction. *Murphy v. United States*, 272 U. S. 630, 632.

The Government urges that application of the doctrine of *res judicata* is precluded also by the difference in the issues presented in the two cases; that although the indictment and this proceeding arise out of the same transactions and facts, the issues in them are not the same; that on the indictment the issue was whether Mitchell had "willfully" attempted to "evade or defeat" the tax; that whether he had done so "fraudulently" was not there an issue, *United States v. Scharton*, 285 U. S. 518; compare *United States v. Murdock*, 290 U. S. 389, 397; and that in this proceeding the issue is specifically whether the deficiency was "due to fraud." Compare *Burton v. United States*, 202 U. S. 344, 380. Since there was not even an adjudication that Mitchell did not wilfully attempt to evade or defeat the tax, it is not necessary to decide whether such an adjudication would be decisive also of this issue of fraud. Compare *Hanby v. Commissioner*, 67 F. (2d) 125, 129.

Second. Mitchell contends that this proceeding is barred under the doctrine of double jeopardy because the 50 per centum addition of \$364,354.92 is not a tax, but a criminal penalty intended as punishment for allegedly fraudulent acts. Unless this sanction was intended as punishment, so that the proceeding is essentially criminal,

¹ *United States v. Warner Bros. Pictures, Inc.*, 13 F. Supp. 614 (E. D. Mo.), affirmed on other grounds, 298 U. S. 643; *United States v. Donaldson-Schultz Co.*, 148 Fed. 581 (C. C. A. 4); *United States v. Schneider*, 35 Fed. 107 (C. C. D. Ore.); *Sanden v. Morgan*, 225 Fed. 266, 268-69 (S. D. N. Y.)

the double jeopardy clause provided for the defendant in criminal prosecutions is not applicable.

1. In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil. As stated in *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320, 339:

"In accord with this settled judicial construction; the legislation of Congress from the beginning, not only as to tariff but as to internal revenue, taxation and other subjects, has proceeded on the conception that it was within the competency of Congress, when legislating as to matters exclusively within its control, to impose appropriate obligations and sanction their enforcement by reasonable money penalties, giving to executive officers the power to enforce such penalties without the necessity of invoking the judicial power."

Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense. The question for decision is thus whether § 293 (b) imposes a criminal sanction. That question is one of statutory construction. Compare *Murphy v. United States*, 272 U. S. 630, 632.

Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted.²

² Typical of this class of sanctions is the deportation of aliens. *Fong Yue Ting v. United States*, 149 U. S. 698; *Low Wah Suey v. Backus*, 225 U. S. 460; *Zakonaite v. Wolf*, 226 U. S. 272; *Bugajewitz v. Adams*, 228 U. S. 585; *Ng Fung Ho v. White*, 259 U. S. 276; *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149. Disbarment is likewise a sanction of this type. *Ex parte Wall*, 107 U. S.

Forfeiture of goods or their value and the payment of fixed or variable sums of money are other sanctions which have been recognized as enforceable by civil proceedings since the original revenue law of 1789. Act of July 31, 1789, c. 5, § 36, 1 Stat. 29, 47. In spite of their comparative severity, such sanctions have been upheld against the contention that they are essentially criminal and subject to the procedural rules governing criminal prosecutions. *Passavant v. United States*, 148 U. S. 214; *United States v. Zucker*, 161 U. S. 475; *Hepner v. United States*, 213 U. S. 103; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Chicago, B. & Q. Ry. Co. v. United States*, 220 U. S. 559, 578; *United States v. Regan*, 232 U. S. 37; *Grant Bros. Construction Co. v. United States*, 232 U. S. 647, 660; *Murphy v. United States*, 272 U. S. 630; *Various Items v. United States*, 282 U. S. 577; *Lloyd Sabaudo Societa v. Elting*, 287 U. S. 329, 334.³

265. Compare also *Hawker v. New York*, 170 U. S. 189, 196, 199-200; *Board of Trade v. Wallace*, 67 F. (2d) 402, 407 (C. C. A. 7); *Farmers' Livestock Commission Co. v. United States*, 54 F. (2d) 375, 378 (E. D. Ill.).

³ See also notes 7 to 13, *infra*. The distinction here taken between sanctions that are remedial and those that are punitive has not generally been specifically enunciated. In determining whether particular rules of criminal procedure are applicable to civil actions to enforce sanctions, the cases have usually attempted to distinguish between the type of procedural rule involved rather than the kind of sanction being enforced. Thus *Hepner v. United States*, 213 U. S. 103, 111-112, holding that a verdict may be directed for the Government, and *United States v. Regan*, 232 U. S. 37, 50, holding that the Government need not prove its case beyond a reasonable doubt, distinguished *Boyd v. United States*, 116 U. S. 616, and *Lees v. United States*, 150 U. S. 476, holding that the defendant could not be required to be a witness against himself on the ground that "the guaranty in the Fifth Amendment to the Constitution against compulsory self-incrimination . . . is of broader scope than are the guaranties in Article III and the Sixth Amendment governing trials in criminal prosecutions." 232 U. S. at 50. Compare also *Pierce v. United States*, 255 U. S. 398, 401.

2. The remedial character of sanctions imposing additions to a tax has been made clear by this Court in passing upon similar legislation. They are provided primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud.⁴ In *Stockwell v. United States*, 13 Wall. 531, 547, 551, the Court said of a provision which added double the value of the goods:

"It must therefore be considered as remedial, as providing indemnity for loss. And it is not the less so because the liability of the wrongdoer is measured by double the value of the goods received, concealed, or purchased, instead of their single value. The act of abstracting goods illegally imported, receiving, concealing or buying them, interposes difficulties in the way of a government seizure, and impairs, therefore, the value of the government right. It is, then, hardly accurate to say that the only loss the government can sustain from concealing the goods liable to seizure is their single value, or to assert that the liability imposed by the statute of double the value is arbitrary and without reference to indemnification. Double the value may not be more than complete indemnity. . . .

"The act of 1823 was, as we have seen, remedial in its nature. Its purpose was to secure full compensation for interference with the rights of the United States. . . ." ⁵

3. In §§ 276 and 293 it is provided that collection of the 50 per centum addition, like that of the primary tax it-

⁴ *Taylor v. United States*, 3 How. 197, 210; *Bartlett v. Kane*, 16 How. 263, 274; *Cliquot's Champagne*, 3 Wall. 114, 145; *Dorsheimer v. United States*, 7 Wall. 166, 173; *Passavant v. United States*, 148 U. S. 214, 221. Compare *McDowell v. Heiner*, 9 F. (2d) 120 (W. D. Pa.), affirmed on opinion below, 15 F. (2d) 1015 (C. C. A. 3); *Doll v. Evans*, 7 Fed. Cas. No. 3,969 (C. C. E. D. Pa.); *Stearns v. United States*, 22 Fed. Cas. No. 13,341 (C. C.).

⁵ Compare *United States v. Claflin*, 97 U. S. 546, 552-53.

self, may be made "by distraint" as well as "by a proceeding in court." If the section provided a criminal sanction, the provision for collection by distraint would make it unconstitutional.⁶ Compare *Lipke v. Lederer*, 259 U. S. 557; *Regal Drug Corp. v. Wardell*, 260 U. S. 386. See also *United States v. Chouteau*, 102 U. S. 603, 611; *Boyd v. United States*, 116 U. S. 616; *Lees v. United States*, 150 U. S. 476; *United States v. La Franca*, 282 U. S. 568. That Congress provided a distinctly civil procedure for the collection of the additional 50 per centum indicates clearly that it intended a civil, not a criminal, sanction. Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for the enforcement of remedial sanctions, those rules and guaranties do not apply. Thus the determination of the facts upon which liability is based may be by an administrative agency instead of a jury,⁷ or if the prescribed proceeding is in the form of a civil suit,

⁶ Even though Congress may not provide civil procedure for the enforcement of punitive sanctions, nothing in the Constitution prevents the enforcement of distinctly remedial sanctions by a criminal instead of a civil form of proceeding. Compare *United States v. Stevenson*, 215 U. S. 190, with *United States v. Regan*, 232 U. S. 37, both enforcing the sanction prescribed in 34 Stat. 898. The fact that a criminal procedure is prescribed for the enforcement of a sanction may be an indication that it is intended to be punitive, but cannot be deemed conclusive if alternative enforcement by a civil proceeding is sustained.

⁷ *Passavant v. United States*, 148 U. S. 214; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Elting v. North German Lloyd*, 287 U. S. 324, 327-28; *Lloyd Sabaudo Societa v. Elting*, 287 U. S. 329, 334; cf. *Hamburg-American Line v. United States*, 291 U. S. 420; *Osaka Shosen Kaisha Line v. United States*, 300 U. S. 98. Compare also *San Souci v. Compagnie Francaise de Navigation A Vapeur*, 71 F. (2d) 651, 653 (C. C. A. 1); *Lloyd Royal Belge, S. A. v. Elting*, 61 F. (2d) 745, 747 (C. C. A. 2); *Navigazione Libera Triestina v. United States*, 36 F. (2d) 631, 633

a verdict may be directed against the defendant;⁸ there is no burden upon the Government to prove its case beyond a reasonable doubt,⁹ and it may appeal from an adverse decision;¹⁰ furthermore, the defendant has no constitutional right to be confronted with the witnesses

(C. C. A. 9); *Clay v. Swope*, 38 Fed. 396 (C. C. D. Ky.). And see cases cited in note 2, *supra*.

Administrative determination of sanctions imposed by the income tax laws has likewise been upheld. *Berlin v. Commissioner*, 59 F. (2d) 996, 997 (C. C. A. 2); *McDowell v. Heiner*, 9 F. (2d) 120 (W. D. Pa.), *aff'd* on opinion below, 15 F. (2d) 1015 (C. C. A. 3); *Board v. Commissioner*, 51 F. (2d) 73, 76 (C. C. A. 6); *Wickham v. Commissioner*, 65 F. (2d) 527, 531-32 (C. C. A. 8); *Little v. Helvering*, 75 F. (2d) 436, 439 (C. C. A. 8); *Bothwell v. Commissioner*, 77 F. (2d) 35, 38 (C. C. A. 10); *Doll v. Evans*, Fed. Cas. No. 3,969 (C. C. E. D. Pa.).

⁸ *Hepner v. United States*, 213 U. S. 103; *Four Packages v. United States*, 97 U. S. 404, 412; *Chicago, B. & Q. Ry. Co. v. United States*, 220 U. S. 559, 578. Compare *United States v. Thompson*, 41 Fed. 28 (C. C. S. D. N. Y.); *United States v. Atlantic Coast Line*, 182 Fed. 284 (S. D. Ga.).

⁹ *Lilienthal's Tobacco v. United States*, 97 U. S. 237, 265-67, 271; *United States v. Regan*, 232 U. S. 37; *Grant Bros. Construction Co. v. United States*, 232 U. S. 647, 660. Compare *New York Central & H. R. R. Co. v. United States*, 165 Fed. 833, 839 (C. C. A. 1); *Grain Distillery No. 8 v. United States*, 204 Fed. 429 (C. C. A. 4); *Pocahontas Distilling Co. v. United States*, 218 Fed. 782, 786 (C. C. A. 4); *United States v. Louisville & N. Ry. Co.*, 162 Fed. 185 (S. D. Ala.), *aff'd*, 174 Fed. 1021 (C. C. A. 5); *St. Louis-S. W. Ry. Co. v. United States*, 183 Fed. 770, 771 (C. C. A. 5); *United States v. Illinois Central R. Co.*, 170 Fed. 542, 545-546 (C. C. A. 6); *Atchison, T. & S. F. Ry. Co. v. United States*, 178 Fed. 12, 14 (C. C. A. 8); *Missouri, K. & T. Ry. Co. v. United States*, 178 Fed. 15, 17-18 (C. C. A. 8). Compare also Act of March 2, 1799, c. 22, § 71, 1 Stat. 627, 678; *Locke v. United States*, 7 Cranch 339, 348; *Cliquot's Champagne*, 3 Wall. 114, 143-44.

¹⁰ Compare *United States v. Claflin*, 97 U. S. 546; *United States v. Zucker*, 161 U. S. 475; *United States v. Regan*, 232 U. S. 37. See also *United States v. Baltimore & O. S. W. R. Co.*, 159 Fed. 33, 38 (C. C. A. 6), modified, 220 U. S. 94; *United States v. Louisville &*

against him,¹¹ or to refuse to testify;¹² and finally, in the civil enforcement of a remedial sanction there can be no double jeopardy.¹³

4. The fact that the Revenue Act of 1928 contains two separate and distinct provisions imposing sanctions, and that these appear in different parts of the statute, helps to make clear the character of that here invoked.¹⁴ The sanction of fine and imprisonment prescribed by § 146 (b) for wilfull attempts "in any manner to evade or de-

N. R. Co., 167 Fed. 306, 307-308 (C. C. A. 6); *United States v. Illinois Central R. Co.*, 170 Fed. 542, 545 (C. C. A. 6). Compare *United States v. Sanges*, 144 U. S. 310.

Similarly, if the Government is successful it may recover costs as in other civil suits. *Grant Bros. Construction Co. v. United States*, 232 U. S. 647, 665. See also *United States v. Southern Pacific Co.*, 172 Fed. 909, 911 (C. C. D. Ore.); *United States v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 235 Fed. 951, 952-953 (D. Minn.).

¹¹ *United States v. Zucker*, 161 U. S. 475; *Grant Bros. Construction Co. v. United States*, 232 U. S. 647, 660.

¹² Compare *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149, 155. We do not construe *Boyd v. United States*, 116 U. S. 616, or *Lees v. United States*, 150 U. S. 476, as holding to the contrary where the sanction involved is remedial, not punitive. See note 3, *supra*.

¹³ *Murphy v. United States*, 272 U. S. 630; *Various Items v. United States*, 282 U. S. 577. Compare *Egner v. United States*, 16 F. (2d) 597 (C. C. A. 3); *Wood v. United States*, 204 Fed. 55, 57 (C. C. A. 4); *United States v. St. Louis-S. W. Ry. Co.*, 184 Fed. 28, 32 (C. C. A. 5); *Slick v. United States*, 1 F. (2d) 897, 898 (C. C. A. 7). See also *United States v. Three Copper Stills*, 47 Fed. 495, 499 (D. Ky.); *United States v. Olsen*, 57 Fed. 579, 582-586 (N. D. Cal.); *Castle v. United States*, 17 F. Supp. 515, 518-520 (Ct. Cl.). Compare *Hanby v. Commissioner*, 67 F. (2d) 125 (C. C. A. 4).

¹⁴ The Board of Tax Appeals said in *Mitchell v. Commissioner*, 32 B. T. A. 1093, 1136: "A careful study of the two sections convinces us that they are basically different in character and were enacted for wholly different purposes. The language of the two sections differs widely and contemplates situations which may require entirely dissimilar proof."

feat any [income] tax," introduced into the Act under the heading "Penalties," is obviously a criminal one. The sanction of 50 per centum addition "if any part of any deficiency is due to fraud with intent to evade tax," prescribed by § 293 (b), introduced into the Act under the heading "Additions to the Tax," was clearly intended as a civil one. This sanction, and other additions to the tax, are set forth in Supplement M, entitled "Interest and Additions to the Tax." The supplement includes, besides § 293 (b), §§ 291, 292, 293 (a) and 294. Section 291 prescribes a 25 per centum addition for failure to make and file a return; § 292 prescribes interest at the rate of 6 per cent. per annum upon the deficiency from the date prescribed for payment of the tax; § 293 (a), an addition of 5 per centum if the deficiency "is due to negligence, or intentional disregard of rules and regulations but without intent to defraud"; and § 294 prescribes an addition to the tax of 1 per centum per month in case of non-payment. Obviously all of these "Additions to the Tax" were intended by Congress as civil incidents of the assessment and collection of the income tax.¹⁵

Third. Mitchell insists that *Coffey v. United States*, 116 U. S. 436, requires affirmance of the judgment; the Government argues that this case is distinguishable, and, if not, that it should be disapproved. The Circuit Court of Appeals, citing *Stone v. United States*, 167 U. S. 178, 186-189, and later cases, recognized that the rule of the *Coffey* case "did not apply to a situation where there had been an acquittal on a criminal charge followed by a civil action requiring a different degree of proof"; but

¹⁵ Section 104 imposes a somewhat similar additional tax of 50 per cent. of the net income in the case of corporations formed or availed of for the purpose of avoiding surtax on their shareholders through improper accumulation of surplus. Compare *United Business Corp. v. Commissioner*, 62 F. (2d) 754 (C. C. A. 2).

construing § 293 (b) as imposing a penalty designed to punish fraudulent tax dodgers "and not as a mere preventive measure," it thought that the *Coffey* case and *United States v. La Franca*, 282 U. S. 568, required it "to treat the imposition of the penalty of 50 per cent. as barred by the prior acquittal of Mitchell in the criminal action." Since we construe § 293 (b) as imposing a civil administrative sanction, neither case presents an obstacle to the recovery of the \$364,354.92, the 50 per centum addition here in issue.

Reversed.

MR. JUSTICE McREYNOLDS is of opinion that the judgment of the Circuit Court of Appeals should be affirmed.

MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration or decision of this case.

TICONIC NATIONAL BANK ET AL. v. SPRAGUE
ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.

No. 374. Argued February 2, 3, 1938.—Decided March 7, 1938.

1. As an incident to the right to recover the amount of a bank deposit, the depositor is entitled to interest as damages for the failure to pay upon demand. P. 410.
 2. The obligation of a national bank to pay interest as damages for detention of a debt is not cut off by suspension of its business and appointment of a receiver. P. 410.
 3. The rule that in pro rata distribution, to creditors of an insolvent national bank, interest on claims is limited to interest accrued prior to insolvency, does not apply to the claim of a secured creditor against the assets covered by his lien. The secured creditor may enforce his lien against his security to satisfy both principal and interest. P. 411.
- 90 F. 2d 641, affirmed.